

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Donivan Jay Weis,

Civ. No. 18-2534 (PJS/BRT)

Plaintiff,

v.

REPORT AND RECOMMENDATION

Nicholas Otterson,

Defendant.

In an Order dated December 17, 2018, this Court gave Plaintiff Donivan Jay Weis until January 6, 2019, to pay an initial partial filing fee of \$19.91, failing which it would be recommended that this action be dismissed without prejudice for failure to prosecute. *See* Order 4 (Doc. No. 18); Fed. R. Civ. P. 41(b).

That deadline has now passed, and Weis has not paid the initial partial filing fee. Accordingly, this Court now recommends, in accordance with its prior Order, that this action be dismissed without prejudice under Rule 41(b) for failure to prosecute. *See Henderson v. Renaissance Grand Hotel*, 267 F. App'x 496, 497 (8th Cir. 2008) (per curiam) (“A district court has discretion to dismiss an action under Rule 41(b) for a plaintiff’s failure to prosecute, or to comply with the Federal Rules of Civil Procedure or any court order.”). The Court also recommends the denial—as moot—of Weis’s Application to Proceed in District Court Without Prepaying Fees or Costs (Doc. No. 2), his motion to sue Defendant in his individual capacity (Doc. No. 3), and his second filing requesting permission to proceed in forma pauperis (Doc. No. 15).

RECOMMENDATION

Based upon the foregoing, and on all of the files, records, and proceedings herein,

IT IS HEREBY RECOMMENDED that:

1. This action be **DISMISSED WITHOUT PREJUDICE** under Federal Rule of Civil Procedure 41(b) for failure to prosecute.
2. Weis's Application to Proceed in District Court Without Prepaying Fees or Costs (Doc. No. 2), motion to sue Defendant in his individual capacity (Doc. No. 3), and second filing requesting permission to proceed *in forma pauperis* (Doc. No. 15) be **DENIED** as moot.

Dated: January 14, 2019

s/ Becky R. Thorson
BECKY R. THORSON
United States Magistrate Judge

NOTICE

Filing Objections: This Report and Recommendation is not an order or judgment of the District Court and is therefore not appealable directly to the Eighth Circuit Court of Appeals.

Under Local Rule 72.2(b)(1), "a party may file and serve specific written objections to a magistrate judge's proposed finding and recommendations within 14 days after being served a copy" of the Report and Recommendation. A party may respond to those objections within 14 days after being served a copy of the objections. *See* Local Rule 72.2(b)(2). All objections and responses must comply with the word or line limits set forth in Local Rule 72.2(c).